

COMMISSIONER OF WEALTH TAX

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v.

HINDUSTAN MOTORS LIMITED

March 10, 1976

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

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Wealth Tax Act, 1957 (Act XXVII of 1957)—Sec. 7(1)(2)—Valuation of depreciable assets—Valuation of assets in balance Sheet, if not proper, whether depreciation under the Income Tax Act can be taken into account—Onus to prove valuation.

The respondent assessee maintains accounts regularly. In the accounts maintained by him adequate depreciation could not be provided in the balance sheet in regard to the depreciable fixed assets on account of paucity of profits and hence the depreciation as provided in the balance sheet was very much lower than the depreciation allowable under the Income Tax Act. The assessee claimed before the Wealth Tax Officer that in computing the wealth on the basis of the balance sheet he should reduce the book value of the assets by the difference between the written down value that would be determined for the purpose of Income Tax Act and the actual book figures disclosed by the balance sheet. The Wealth Tax Officer rejected the contention of the assessee and estimated the net value of the assets as shown in the balance sheets for the respective years. The appellate Assistant Commissioner confirmed the orders of the Wealth Tax Officer. The Appellate Tribunal, however, took a contrary view and held that where proper depreciation has not been allowed in the balance sheet it is proper to accept the written down value of the assets as worked out for the purpose of income tax assessments. On a reference made to the High Court, the High Court answered the question in favour of the assessee.

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Allowing an appeal by certificate under section 29(1) of the Wealth Tax Act,

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HELD : Under Section 7(1) of the Wealth Tax Act the value of any asset is the market value. Section 7(2) provides that notwithstanding anything in section 7(1) where the assessee carries on business for which accounts are maintained by him regularly the Wealth Tax Officer may instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case might require. The object of the Wealth Tax officer under section 7 is to arrive at the true value of the assets of the business. If what is shown in the balance sheet is not the true value of the assets disclosed it is open to the assessee to satisfy the Wealth Tax Officer by producing relevant materials that the value given of the fixed assets in the balance sheets is not the true value, and, therefore a reduced value of the assets should be taken into account. In case the assessee wants the written down value to be accepted it is open to him to establish, by acceptable reason that the written down value represents the proper value of the assets at the relevant date. The onus in that case would be entirely on the assessee. Merely a statement that on account of paucity of profits adequate depreciation would not be provided for in the balance sheet is not sufficient to discharge the onus which rests upon the assessee. The judgment of the High Court is set aside and the question answered against the assessee. [581E—H, 582A—B, H, 583A, 584C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 894-896 of 1971.

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From the Judgment and order dated the 29th January 1965 of the Calcutta High Court in Wealth Tax Matter No. 21/52.

A *R. N. Sachthey and S. P. Nayar*, for the Appellant.

Leila Seth, Neelima Thakur, Praveen Kumar and B. P. Maheshwari for the Respondent.

The Judgment of the Court was delivered by

B GOSWAMI, J.—These appeals are by certificate of the Calcutta High Court under section 29(1) of the Wealth-tax Act (briefly the Act).

The assessment years of the respondent company (hereinafter to be described as the assessee) involved in the composite reference to the High Court under section 27(1) of the Act are 1957-58, 1958-59 and 1959-60 for which the corresponding valuation dates are 31st March, 1957, 31st March, 1958 and 31st March, 1959.

C The only common question of law which was referred to the High Court appertaining to all the three assessment years is in the following terms :—

D “Whether on the facts and in the circumstances of the case and in view of the provisions of section 7(2) of the Wealth-tax Act, an adjustment could be made in ascertaining the net value of the depreciable assets of the assessee company by substituting the written down value of the assets computed under the Indian Income-tax Act for the value as shown in the balance sheet”.

The facts appearing from the statement of the case as well as the various orders annexed therewith are briefly as follows :—

E The assessee claimed before the Wealth-tax Officer that in computing the wealth on the basis of balance sheet the Income-tax Officer should reduce the book value of the assets by the difference between the written down value that would be determined for the purpose of Income-tax Act and the actual book figures disclosed by the balance sheet. The difference between the book value and the written down value amounted to Rs. 95,69,070/-, Rs. 67,78,304/- and Rs. 36,15,678/- respectively for the three years under reference. The only contention common to the three appeals related to the valuation of the fixed assets of the assessee. The Wealth-tax Officer proceeded under section 7(2) F (a) and computed the value of the assets at the figures shown in the balance sheets on the material valuation dates. The assessee, however, contended that regard being had to the depreciable assets the written down value determined for the purpose of Income-tax assessment should be taken to be the value of the assets for the purpose of inclusion G in the net wealth and not the value shown in the respective balance sheets. It was not disputed that adequate depreciation could not be provided for in the balance sheets in regard to the depreciable fixed assets on account of paucity of profits and hence the depreciation as provided for in the books was very much lower than the depreciation allowable under the provisions of the Indian Income-tax Act. The H Wealth-tax Officer rejected the contention of the assessee and estimated the net value of the assets as shown in the balance sheets for the respective years. The Appellate Assistant Commissioner confirmed the orders of the Wealth-tax Officer in the appeals filed by the assessee.

The Appellate Tribunal, however, took a contrary view and held that— A

“in all such cases where proper depreciation has not been allowed for in the balance sheet for any reason whatsoever, it is proper to accept the written down value of the assets as worked out for the purpose of the Income-tax assessments.”

The Tribunal, therefore, directed the Wealth-tax Officer to adopt the written down value of the assets as the value thereof for inclusion in the net wealth for all the years under reference. B

At the instance of the Commissioner of Wealth-tax the question set out earlier was referred to the High Court under section 27(1) of the Act. The High Court by the impugned judgment of January 29, 1965, following another decision delivered on the same day in *Commissioner of Wealth-tax, Calcutta v. Tungabhadra Industries Limited*⁽¹⁾ answered the question in the affirmative and in favour of the assessee. Hence the present appeals by certificate. C

The decision in the *Tungabhadra Industries Limited* (supra), which was followed by the High Court, was reversed by this Court in the *Commissioner of Wealth-tax, West Bengal-II v. Tungabhadra Industries Ltd.*⁽²⁾ on August 8, 1969. This Court following an earlier decision of this Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax (Central), Calcutta*⁽³⁾, accepted the contention of the Revenue. D

Section 7 of the Act at the material time stood as follows :—

“(1) The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. E

(2) Notwithstanding anything contained in sub-section (1)—

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case may require.” F
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It is, therefore, clear that when the assessee is carrying on a business for which accounts are maintained by him regularly it is open to the Wealth-tax Officer to determine the net value of the assets of the business as a whole with reference to the balance sheet of such business as on valuation date and to make such adjustments therein as the circumstances H

(1) 60 I.T.R. 447.

(3) 59 I.T.R. 767.

(2) 75 I.T.R. 196.

A of the case may require. The object of the Wealth-tax Officer in determining the value of the assets under section 7 is to arrive at the true value of the assets of the business. If what has been shown in the balance sheet is not the true value of the assets disclosed, it is open to the assessee to satisfy the Wealth-tax Officer by producing relevant materials that the value given of the fixed assets in the balance sheet is not the true value and, therefore, a reduced value of the assets should be taken into account. The onus in that case would be entirely upon the assessee to satisfy the Wealth-tax Officer that what is shown in the balance sheet is not the actual and true value of the assets on the valuation date. The decision will depend upon the facts and circumstances disclosed in each case.

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C This Court in the *Tungabhadra Industries* case (supra) dealing with the same question observed as follows :—

“It is also open to the assessee to establish by acceptable reasons that the written down value of any particular asset represents the proper value of the asset on the relevant valuation date. In the absence of any material produced by the assessee to demonstrate that the written down value is the real value, the Wealth-tax Officer would be justified in a normal case in taking the value given by the assessee itself to its fixed assets in its balance-sheet for the relevant year as the real value of the assets for the purposes of the Wealth-tax. It is a question of fact in each case as to whether the depreciation has to be taken into account in ascertaining the true value of the assets. The onus of proof is on the assessee who must produce reliable material to show that the written down value of the assets and not the balance-sheet value is the true value. If, therefore, the assessee merely claims that the written down value of the assets should be adopted but fails to produce any material to show that the written down value is the true value, the Wealth-tax Officer is justified in rejecting the claim and adopting the values shown by the assessee himself in his balance sheet as the true value of his assets”.

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F We should have thought that the question raised in these appeals is squarely covered by the above decision. Even so, Mrs. Leila Seth submits that in the instant case it is admitted that adequate depreciation could not be provided for in the balance sheet in regard to the depreciable fixed assets on account of paucity of profits and hence the depreciation as provided in the balance sheet was much lower than the depreciation allowable. According to the learned counsel this fact is sufficient to displace the balance sheet as a *prima facie* evidence and substitute in its place the written down value and onus shifts on the Revenue to establish that paucity of profits is wrong.

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H It is true, as described in the Statement of the case, that it was not disputed that adequate depreciation could not be provided for in the balance sheet on account of paucity of profits. But we are unable to hold that merely a statement to that effect is sufficient to discharge the onus which rests upon the assessee to establish that the value of the

assets shown in the balance sheet is not the real value of the assets as on the valuation date. If the contention of the learned counsel is accepted, it will be tantamount to laying down a rule that in determination of the value of assets the written down value allowable under the Income-tax Act shall always be the value of the assets. In that event, there would be no necessity for any exercise by the Wealth-tax Officer. That is, however, not the intention of section 7 which clearly shows that the Wealth-tax Officer may make such adjustments in the value of the assets shown in the balance sheet in accordance with the requirements of the circumstances disclosed by the assessee. Those circumstances which will be disclosed by the assessee must relate to the determination of the real value of the assets irrespective of what is shown in the balance sheet if the assessee seeks a lower figure than appearing in the same. Thus onus is not discharged by merely stating that since profits in a given year are less or nil little or no provision was made for depreciation of the assets in the balance sheet. The assessee must also show further to what extent the depreciation has resulted in lowering the value of the assets compared to that mentioned in the balance sheet and whether the written down value computed under the Indian Income-tax Act in fact represents the lower value. It is open, as observed by this Court in the case of *Tungabhadra Industries* (supra), to establish after producing relevant material that the value of the fixed assets in the balance sheet is artificially inflated. Further in case the assessee wants the written down value to be accepted, it is open to him to establish, as mentioned in that case, by acceptable reason, that the written down value represents the proper value of the assets at the relevant date.

The learned counsel also drew our attention to a decision of this Court in the Commissioner of *Wealth-tax, West Bengal v. Aluminium Corporation of India Ltd.*,⁽¹⁾ where at page 172 there is an observation that the value of the assets shown in the balance sheet is not conclusive. The value of the assets shown in the balance sheet is not conclusive in the sense that it can be demonstrated to be more or less than what is shown therein. That is the core of determination under section 7(2)(a) of the Act. The observation of this Court in the above case has to be understood only in that context.

We may in this connection refer to clause (b) of the proviso to clause (vi) of sub-section (2) of section 10 of the Income-tax Act, 1922 where a provision is made for carrying forward of depreciation allowance for the following year or years where full effect cannot be given to the allowance in a particular year owing to there being no profits or gains chargeable for that year or owing to the profits and gains chargeable being less than the allowance. If an assessee chooses to carry forward the depreciation allowance, and shows the value of the assets at a particular figure in the balance sheet, he cannot by merely asserting that there was no profit or very little profit compel the tax authorities to discard the value mentioned in the balance sheet and to accept the written down value. The depreciation must have nexus with real value of the assets itself and the burden is upon the assessee to satisfy the Wealth-tax Officer by producing relevant reliable materials

(1) 35 I.T.R. 167.

A for determination of the actual and true value of the assets. It may be that in a given year the written down value may be the real value of the assets but that cannot be the inexorable rule in determining the value of the assets under section 7 of the Act.

B Mrs. Seth drew our attention to a decision of the Calcutta High Court in the *Commissioner of Wealth-tax (Central) Calcutta v. Mohan Lal Nopany*⁽¹⁾. This was a case of break up value of certain shares of a company. There was material in that case to indicate that the balance sheet did not represent the correct value of the shares. The observation in that case must be taken to be confined to its own facts. To the extent observations are made in that contrary to the view we have taken

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In the result the judgment of the High Court is set aside and the question is answered in the negative against the assessee and in favour of the Revenue. The appeals are allowed with one set of costs.

P.H.P.

Appeals allowed.